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No. 165

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

R. E. RAY and SADIE RAY, His Wife,
Petitioners,

vs.

STATE HIGHWAY COMMISSION OF KANSAS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

The petitioners pray that a writ of certiorari issue to review the decision of the Supreme Court of the State of Kansas.

OPINIONS BELOW

The opinion of the District Court of Shawnee County, Kansas, entered September 28, 1964, is not reported and is evidenced by a letter from the District Judge, clarifying letters from counsel for the respective parties and a Journal Entry of Summary Judgment (Appendix A, *infra*, pp. A1). The opinion of the Supreme Court of the State of Kansas entered January 22, 1966, is reported at 196 Kan. 13, 410 P.2d 278 (Apepndix A, *infra*, pp. A7).

JURISDICTION

The decision of the Supreme Court of the State of Kansas was dated and entered January 22, 1966. Petition for Rehearing, timely filed, was denied by order dated and entered February 23, 1966. The jurisdiction of the court is invoked under 28 U.S.C. §1257(3), since rights, privileges and immunities have been specially set up and claimed under the United States Constitution.

QUESTIONS PRESENTED

1. May the State Highway Commission of Kansas, under the guise of police power, take the petitioners' right of direct access to an existing highway without condemnation and without the payment of just compensation and without the exercise of procedural due process?

2. Where the state legislature of the state has provided a procedure for the obtaining of access rights by gift, devise, purchase or condemnation, may the State Highway Commission administratively determine to ignore the applicable statutes and take petitioners' right of direct access to an existing highway without the payment of compensation and without the exercise of procedural due process?

3. If the State Highway Commission of the State of Kansas has been properly held to have the power to take petitioners' right of direct access to an existing highway without the payment of just compensation, can such power be exercised administratively and summarily without the establishment and maintenance of a procedure providing for procedural due process?

4. If the State Highway Commission of the State of Kansas is held to have the power and right by the exercise of police power to take direct access rights and not to compensate for damages if the abutting property owner is left with reasonable indirect access, can such power and right be exercised without a procedurally proper determination of reasonableness and an opportunity to have a judicial determination of reasonableness by a jury?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisions and statutes involved in this case are as follows:

United States Constitution, Amendment XIV:

> "§1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

United States Constitution, Amendment V:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment VII:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."